

April 20, 2022

VIA ECF **MEMORANDUM ENDORSED**

The Honorable Gregory H. Woods  
 United States District Judge  
 Southern District of New York  
 United States Courthouse  
 500 Pearl Street  
 New York, New York 10007

USDC SDNY  
 DOCUMENT  
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**Re: *United States v. Warren Wilder, 20 Cr. 543 (GHW)***

Dear Judge Woods:

We represent Mr. Wilder in the above-captioned case, in which Mr. Wilder's sentencing has been scheduled by the Court for May 9, 2022. We write to request an extension of the current schedule for sentencing submissions and sentencing, in light of the potential need for a *Fatico* hearing regarding a factual dispute and its impact on a determination of the appropriate United States Sentencing Guidelines range for Mr. Wilder. We have conferred with the government regarding this request, which the government joins. This is the first request by the parties for a modification to the sentencing schedule.

Mr. Wilder has objected to the calculation of the applicable range under the United States Sentencing Guidelines that has been identified in the Initial Disclosure Presentence Investigation Report (the "Initial PSR"). Specifically, Mr. Wilder objects to the Probation Office's cross-reference application of USSG § 2A2.1(a)(1) in calculating the appropriate offense level. Mr. Wilder at no time, knew, or expected that his co-defendant, Mr. Morgan, would use the firearm "in connection with the attempted murder of a victim." *See* Initial PSR ¶ 3(b). As a result, Mr. Wilder respectfully submits that the government will not be able to meet their burden of proof with respect to this provision. It is our understanding from our ongoing dialogue with the government that the government will take the position that this cross-reference should apply in determining the applicable Sentencing Guidelines range for Mr. Wilder. It is possible that adjudication of this dispute between Mr. Wilder and the government may potentially require a *Fatico* hearing to establish the requisite record for adjudication by the Court.

We understand that a similar issue, albeit with a different relevant factual predicate, has arisen in connection with the anticipated sentencing of Mr. Wilder's co-defendant, Wayne J. Morgan, in this matter. The Court addressed this issue during a conference held on April 14, 2022. It is our understanding that the Court has adjourned the previous sentencing schedule for Mr. Morgan, as a result of that conference, and, in doing so, has established a process for Mr. Morgan and the government to submit evidence regarding their dispute, after which the Court will determine whether an evidentiary or *Fatico* hearing is warranted. We further understand that the government indicated that, should a *Fatico* hearing take place for Mr. Morgan and should Mr.

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Wilder press his objection as to the cross-reference, the government intends to request that a single sentencing hearing be held for both defendants.<sup>1</sup>

We understand that submissions relating to this issue in Mr. Morgan's case should be completed by May 17, 2022. In light of the current posture of Mr. Morgan's sentencing, we respectfully submit that it may be most efficient to adjourn Mr. Wilder's sentencing and related deadlines and instead schedule a conference at an appropriate time after Mr. Morgan and the government have submitted materials in connection with Mr. Morgan's sentencing. This will allow the Court and the parties to determine whether a *Fatico* hearing may be necessary. Based on that determination, the Court may be better positioned to set an appropriate briefing schedule and sentencing date.

We thank the Court for its consideration of this matter, and we are available to discuss these issues further at a conference.

Respectfully submitted,



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cc: Micah Fergenson, AUSA (via ECF)

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<sup>1</sup> Mr. Wilder takes no position at this time on the appropriateness of a joint sentencing hearing.